

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 43 of 1996

with

Civil Appln No.1138 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BANK OF INDIA

Versus

VIJAY RAMNIKLAL KAPADIA

Appearance:

MR J.T. Trivedi for the appellant
Mr. Harin M.Sompura for respondent No.2.
Respondent No.1 served upon refusal.
Respondent No.3 served.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 21/06/96

ORAL JUDGEMENT

This Appeal From Order under Order 43, Rule (1)
(a) of the Civil Procedure Code is filed by the
appellant-Bank of India challenging the order passed
below application, Ex.12, in Special Civil Suit No.242

of 1995 by the learned 3rd Joint Civil Judge (S.D.), Surat dated 8-1-1996 directing the appellant-Bank to take the plaint to submit to the Debt Recovery Tribunal on or before 19-1-1996.

The appellant instituted the said suit for recovery of Rs.13,86,000/- from the respondents (original defendants). It is alleged that respondent No.1 , who was the employee in the main branch of the appellant-Bank , committed fraud , in concert with respondents Nos.2 and 3 (original defendants Nos.2 and 3), which resulted in the aforesaid loss. The suit was, therefore, filed to recover the ill-gotten gains from the respondents, together with running interest and costs of the suit.

It appears that the suit was transferred to the Debt Recovery Tribunal at Ahmedabad purportedly under section 31 (2) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the said Act") . It further appears that the Tribunal in turn returned the plaint to the Court of Civil Judge (S.D.) Surat, inter alia, observing that the plaint of the suit seeking recovery of the debt could not be accepted by any Civil Court. When the plaint was returned to the Civil Court at Surat, it appears that the appellant submitted an application, Ex.12, contending, inter alia, that the suit is to be entertained by the Civil Court and not by the Debt Recovery Tribunal as the amount sought to be recovered is not "debt" as defined in section 2 (g) of the said Act. The said application, Ex.12, was rejected by the learned trial Judge against which the present appeal is filed.

Section 2 (g) of the said Act which defines "debt" is relevant for the purposes of this appeal. It reads as under:

"2. In this Act, unless the context otherwise requires,-

(g) 'debt' means any liability (inclusive of interest) which is alleged as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or

unsecured, or whether payable under a decree or order of any civil court or otherwise and subsisting on and legally recoverable on the date of the application;"

On the plain reading of the above definition, it is clear that any liability which is alleged and due from any person by a bank during the course of any business activity undertaken by it in cash or otherwise, whether secured or unsecured, or whether payable under a decree or an order of any civil court or otherwise, and subsisting on and legally recoverable on the date of the application is "debt". Thus any liability due from any person by a bank during the course of any business activity undertaken by the bank will constitute a "debt". Therefore, a fraud committed by an employee of the Bank cannot or should not be construed a "debt". In the instant case, it is the allegation of the appellant bank in the plaint that respondent No.1 being an employee of the appellant-Bank has committed fraud with the Bank to the extent of Rs.13,86,000/- and the suit is filed to recover the said amount. By no stretch of imagination the said misappropriation of the amount of the Bank by its employee can be construed as a "debt". The learned trial Judge, in the instant case, unfortunately has referred to and reproduced only a limited part of the definition of the word "debt" and has committed an error in holding that the debt is a liability which is alleged as due from any person by a Bank. The later part of the definition of the word "debt" is clear which states that it is the liability due from any person during the course of any business activity undertaken by the bank which can be said to be a "debt", meaning thereby that any transaction between a Bank and its customer with respect to the business activity undertaken by the Bank ,i.e. granting of loan etc. Misappropriation of the amount of the Bank by its employee and recovery thereof by way of suit can never be construed as a "debt". In view of this, the appeal is required to be allowed.

In the result, this appeal is allowed. The impugned order dated 8th January 1996 passed by the 3rd Joint Civil Judge (S.D.) ,Surat below application, Ex.12, in Special Civil Suit No. 242/95 is set aside. The trial Court is directed to hear and decide the suit on merits and in accordance with law as expeditiously as possible and preferably within one year from the date of receipt of the writ of this Court. No order as to costs. Writ to be issued forthwith.

In view of the above, no order on CA No.1138/96
and it stands disposed of accordingly.

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